

U.S. Department of Justice

Washington, DC 20530

**Exhibit B to Registration Statement****Pursuant to the Foreign Agents Registration Act of 1938, as amended**

**INSTRUCTIONS.** A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at <https://www.fara.gov>.

**Privacy Act Statement.** The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the FARA Unit in Washington, DC. Statements are also available online at the FARA Unit's webpage: <https://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <https://www.fara.gov>.

**Public Reporting Burden.** Public reporting burden for this collection of information is estimated to average .32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, FARA Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant

Teneo Strategy LLC

2. Registration Number

6698

3. Name of Foreign Principal

NEOM Company

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.
5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.
6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.
7. What is the date of the contract or agreement with the foreign principal? December 1, 2020
8. Describe fully the nature and method of performance of the above indicated agreement or understanding.

The registrant performed communications services for the foreign principal, as described in the attached agreement. For the performance of these services, the foreign principal will pay the registrant 3,656,250.00 Saudi Riyal, plus certain expenses.

Note: The agreement reflected in this Exhibit B is in addition to the agreements previously disclosed in the Exhibits B for the foreign principal dated July 8, 2019, January 16, 2020, and October 13, 2020. The attached agreement is dated December 1, 2020, but the agreement was signed and returned to the registrant on December 14, 2020.

---

9. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

The registrant provided support for the NEOM Communications Department, including: overall strategic communications counsel; day-to-day counsel and support on external and internal communications and media relations activities (including review of documents prepared by NEOM Communications); development of NEOM Sector messaging (sector communications strategies and implementation to be handled by NEOM Marketing and Communications); media training for senior NEOM executives; close coordination with NEOM's Marketing Department and other NEOM communications and marketing agencies to implement communications activities; and issues and crisis communications counsel.

---

10. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act<sup>1</sup>.

Yes ☒ No ☐

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose. The response must include, but not be limited to, activities involving lobbying, promotion, perception management, public relations, economic development, and preparation and dissemination of informational materials.

The registrant's activities on behalf of the foreign principal included counsel to the foreign principal regarding interactions with the media but did not include communications with members of the U.S. media nor did the registrant's activities include communications with U.S. government officials or employees.

---

11. Prior to the date of registration<sup>2</sup> for this foreign principal has the registrant engaged in any registrable activities, such as political activities, for this foreign principal?

Yes ☒ No ☐

If yes, describe in full detail all such activities. The response should include, among other things, the relations, interests, and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored, or delivered speeches, lectures, social media, internet postings, or media broadcasts, give details as to dates, places of delivery, names of speakers, and subject matter. The response must also include, but not be limited to, activities involving lobbying, promotion, perception management, public relations, economic development, and preparation and dissemination of informational materials.

Set forth below a general description of the registrant's activities, including political activities.

Teneo Strategy LLC has been registered under FARA on behalf of NEOM Company since July 8, 2019, and its prior activities on behalf of the foreign principal are detailed in the supplemental statements on file with the Department of Justice. Since the period covered by the registrant's last supplemental statement, the registrant has engaged in the communications activities described in Item 9 as well as stakeholder identification and mapping activities described in the previously-filed Exhibit B for the foreign principal dated October 13, 2020.

Set forth below in the required detail the registrant's political activities.

Date	Contact	Method	Purpose
------	---------	--------	---------

12. During the period beginning 60 days prior to the obligation to register<sup>3</sup> for this foreign principal, has the registrant received from the foreign principal, or from any other source, for or in the interests of the foreign principal, any contributions, income, money, or thing of value either as compensation, or for disbursement, or otherwise?

Yes ☒ No ☐

If yes, set forth below in the required detail an account of such monies or things of value.

Date Received	From Whom	Purpose	Amount/Thing of Value
11/19/2020	NEOM Company	Expenses	\$193,972.26
11/19/2020	NEOM Company	Expenses	\$10,209.07
11/20/2020	NEOM Company	Fees	\$250,000.00
11/26/2020	NEOM Company	Fees	\$150,000.00

\*Note that none of the payments referenced here are for fees or expenses related to the agreement covered by this Exhibit B; all are associated with work described in previous submissions.

\$604,181.33

Total

13. During the period beginning 60 days prior to the obligation to register<sup>4</sup> for this foreign principal, has the registrant disbursed or expended monies in connection with activity on behalf of the foreign principal or transmitted monies to the foreign principal?

Yes ☐ No ☒

If yes, set forth below in the required detail and separately an account of such monies, including monies transmitted, if any.

Date	Recipient	Purpose	Amount
------	-----------	---------	--------

<sup>1</sup> "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

<sup>2,3,4</sup> Pursuant to Section 2(a) of the Act, an agent must register within ten days of becoming an agent, and before acting as such.

**EXECUTION**

In accordance with 28 U.S.C. § 1746, and subject to the penalties of 18 U.S.C. § 1001 and 22 U.S.C. § 618, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this statement filed pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, that he/she is familiar with the contents thereof, and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date

Printed Name

Signature

December 24, 2020

Richard Powell

Sign

/s/ Richard Powell

Sign

Sign

Sign

**NEOM COMPANY**

and

**TENEO STRATEGY LLC**

**COMMUNICATION ADVISORY SERVICES**

---

**CONSULTANCY AGREEMENT**

---

## CONTRACT AGREEMENT

**THIS CONTRACT** is dated 1 December 2020.

### BETWEEN

- (1) **NEOM COMPANY**, a single member joint stock company duly incorporated under the laws of the Kingdom of Saudi Arabia under commercial registration number 1010504644 and having its physical address at the Information Technology and Communications Complex (ITCC), 2<sup>nd</sup> Floor, Building IN-01, Al Nakheel District 12382, Riyadh P.O. Box 10, Riyadh **11411, Kingdom of Saudi Arabia (the "Employer") (which expression shall include its successors in title and permitted assignees);**

and

- (2) **TENEO STRATEGY LLC, a Delaware limited liability company (the "Consultant")** duly organized under the laws of the state of Delaware, and whose address is 280 Park Avenue, 4<sup>th</sup> Floor, New York, NY 10017, United States of America,

**each a "Party" and together the "Parties".**

### WHEREAS

- (A) The Consultant will provide the Employer with operational business continuity support for the NEOM Communications Department.
- (B) The Employer has selected the Consultant to provide the Services.
- (C) The Consultant has agreed to provide the Services on the terms set out in this Contract in consideration for the Contract Price.

### THE PARTIES HAVE AGREED AS FOLLOWS:

#### 1. DEFINITIONS

In this Contract, unless the context otherwise requires capitalised terms have the meaning given in the Terms and Conditions.

#### 2. CONTRACT DOCUMENTS

This Contract consists of the following documents and any inconsistency or discrepancy between these documents shall be resolved in the following order of priority:

- 2.1 this Contract Agreement;
- 2.2 the Contract Data;
- 2.3 the Terms and Conditions; and
- 2.4 the Schedules.

#### 3. TERM

This Contract shall have effect on and from the Effective Date and shall continue in full force and effect until completion of the Services and acceptance thereof by the Employer (the **"Term"**).

#### 4. SERVICES

- 4.1 The Consultant shall perform the Services in accordance with the terms set out in this Contract.
- 4.2 If, before this Contract becomes effective, the Consultant performs any of the Services following written instruction to commence and proceed from the Employer, those Services

shall be governed by this Contract and shall be deemed to be performed pursuant to this Contract.

**5. CONTRACT PRICE**

**In consideration of the Consultant's satisfactory performance of the Services, the Employer shall pay the Consultant a fee in accordance with Schedule 2 (the "Contract Price") in accordance with this Contract.**

**6. DATE FOR COMMENCEMENT AND COMPLETION**

**The Commencement Date of the Services shall be 1<sup>st</sup> June 2020 (the "Commencement Date"). The Date for Completion of the Services shall be 30<sup>th</sup> November 2020 (the "Date for Completion"), as may be adjusted upon the mutual agreement of the Parties in accordance with this Contract.**

**IN WITNESS WHEREOF**, the Parties hereto have signed this Contract on the day and year written below.

**NEOM Company**

Name: Nadhmi Al Nasr

Signature: 

Title: Chief Executive Officer

Date: Dec 14, 2020



**TENEO STRATEGY LLC**

Name: Steven Sullivan

Signature: 

Title: Chief Financial Officer

Date: 12.01.2020



**CONTRACT DATA**

	ISSUE	DETAIL	
1.	<b>Contract Name/No</b>	<b>101063 – Management Advisory Services</b>	
2.	<b>Employer Address</b> (Parties and Clause 24)	Attention:	Ron Bowker
		Address	As stated in the Contract Agreement
		Telephone	966535515606
		Email	ron.bowker@neom.com
3.	<b>Consultant Address</b> (Parties and Clause 24)	Attention:	Steven Sullivan with a copy to: General Counsel
		Address	As stated in the Contract Agreement
		Telephone	+1 (212) 886 9303
		Email	<a href="mailto:Steven.sullivan@teneo.com">Steven.sullivan@teneo.com</a> <a href="mailto:Lawrence.carnevale@teneo.com">Lawrence.carnevale@teneo.com</a>
4.	<b>Consultant's Representative</b> (Clause 1.1)	Attention:	Steven Sullivan
		Address	As stated in the Contract Agreement
		Telephone	212-886-9303
		Email	<a href="mailto:Steven-sullivan@teneo.com">Steven-sullivan@teneo.com</a>
5.	<b>Prolonged FM Period</b> (Clause 1.1)	<p>The Prolonged FM Period shall be:</p> <p>(a) fifteen (15) days if the original Date for Completion is less than six (6) months from the Effective Date; or</p> <p>(b) thirty (30) days if the original Date for Completion is six (6) months or more from the Effective Date,</p> <p>from the later of the date on which the affected Party gives notice of the Force Majeure in accordance with Clause 21.5 and the date on which the Force Majeure actually prevents the affected Party's ability to perform its obligations.</p>	
6.	<b>Periodic Reports</b> (Clause 2.9)	The Consultant shall provide any agreed upon reports as applicable in the delivery of the Services.	
7.	<b>Payment Terms - invoices</b> (Clause 9.3.1)	The Consultant shall issue invoices as set out within Schedule 2.	
8.	<b>Payment Terms - currency</b> (Clause 9.4.1(C))	The currency shall be SAR.	
9.	<b>Consultant's country of incorporation</b> (Clause 11.1.1)	United States of America.	

	ISSUE	DETAIL
10.	<b>Insurance – third party liability insurance</b> (Clause 12)	The Consultant shall procure and maintain third party liability insurance for an amount not less than SAR 1,000,000 per claim and not less than SAR 2,000,000 in the aggregate.
11.	<b>Insurance - professional indemnity insurance</b> (Clause12)	The Consultant shall procure and maintain professional indemnity insurance for an amount not less than SAR 8,000,000 per claim and in the aggregate.

**TERMS AND CONDITIONS**  
**TABLE OF CONTENTS**

<b>Clause</b>	<b>Headings</b>	<b>Page</b>
1.	DEFINITIONS AND INTERPRETATION.....	1
2.	THE <b>CONSULTANT'S</b> OBLIGATIONS .....	4
3.	COMPLIANCE AND APPROVALS .....	7
4.	VARIATIONS .....	7
5.	EMPLOYER SUPPLIED INFORMATION .....	8
6.	RECORDS.....	8
7.	PERSONNEL .....	9
8.	ENVIRONMENTAL HEALTH & SAFETY AND QUALITY ASSURANCE/CONTROL .....	10
9.	PAYMENT .....	10
10.	TAXES AND FEES.....	12
11.	WARRANTIES.....	13
12.	INSURANCE .....	14
13.	INDEMNITY AND LIABILITY.....	15
14.	NO SECURITY .....	16
15.	CONFIDENTIALITY.....	16
16.	INTELLECTUAL PROPERTY .....	17
17.	SUSPENSION .....	18
18.	NON-SOLICITATION. ....	18
19.	TERMINATION.....	19
20.	ASSIGNMENT AND SUB-CONTRACTING.....	21
21.	FORCE MAJEURE.....	21
22.	CHANGE IN LAW.....	24
23.	DISPUTE RESOLUTION.....	25
24.	NOTICES.....	25
25.	MISCELLANEOUS .....	26
	SCHEDULE 1 SCOPE OF SERVICES.....	29
	SCHEDULE 2 SCHEDULE OF COMMERCIALS & KEY PERSONNEL .....	30

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Contract, unless the context otherwise requires:

**"Affiliate"** with respect to a Party means a public, private, governmental or commercial company or other entity that Controls, is Controlled by, or is under common Control with, such Party and/or a shareholder of such Party;

**"Authority"** means any government, semi or local government, statutory, public or other authority or body having jurisdiction over or in connection with the Employer, the Consultant, the Project or the Services (or anything in connection with any of them);

**"Background IP"** has the meaning given to it in Clause 16.1;

**"Business Day"** means any day which is an official business day of the Employer;

**"Certificate of Insurance"** is the document providing evidence that required insurance coverage, endorsements and limits have been purchased by the Consultant;

**"Change in Law"** means with respect to a law governing this Contract:

- (a) its introduction; or
- (b) its amendment, change, modification or repeal,

**after the start of the Term which has a material adverse effect on the Consultant's** performance of its obligations under this Contract and which the Consultant could not reasonably have foreseen at the start of the Term.

**"Commencement Date"** means the date by which the Services shall commence as set out in the Contract Agreement;

**"Confidential Information"** means all information, documentation, data and IP Rights (including information stored or transmitted into a computer, database or any other device by electronic means) relating to either Party, its Affiliates, agents and contractors or this Contract which is provided to or obtained by the other Party including any document or data marked **"Confidential" or any information, document or data which either Party has been** informed is confidential or which either Party ought reasonably comprehend that the other Party would regard as confidential;

**"Consultant's Representative"** means the person appointed by the Consultant to act as its representative in respect of this Contract as named in the Contract Data or any replacement notified by the Consultant to the Employer from time to time;

**"Contract"** means the Contract Agreement, Contract Data, Terms and Conditions, and Schedules, as set out under Clause 2 of the Contract Agreement;

**"Contract Agreement"** means the form of contract signed by the Parties which forms part of this Contract;

**"Contract Data"** means the information and the terms and conditions set out after the Contract Agreement;

**"Contract Price"** means the amount set out in the Contract Agreement, and in accordance with Schedule 2, that the Employer shall pay the Consultant for satisfactory performance of the Services, as amended in accordance with this Contract including amendments due to Variations;

**"Control"** means the power to direct the management and policies of a company or other entity, directly or indirectly, whether through the ownership of shares, the use of voting rights, by contract or otherwise;

**"Covered Person"** has the meaning given to it in Clause 13.2;

**"Date for Completion"** means the date by which the Services shall be completed as set out in the Contract Agreement;

**“Effective Date”** shall mean June 1, 2020;

**“Employer Supplied Information”** means any information, documentation, data and IP Rights (including information stored or transmitted into a computer, database or any other device by electronic means) supplied or made available to the Consultant by or on behalf of the Employer at any time and whether or not contained in this Contract;

**“Employer’s Representative”** means the person appointed by the Employer to act as its representative in respect of this Contract and whose name the Employer may notify to the Consultant from time to time;

**“FARA”** means the U.S. Foreign Agents Registration Act;

**“Force Majeure”** has the meaning given in Clause 21.1;

**“GAZT”** means the General Authority of Zakat and Tax of the Kingdom of Saudi Arabia;

**“Good Industry Practice”** means the practices which are generally engaged in or observed by reputable international consultants regarding services of a similar complexity, scope, nature and purpose to the Services and acting in good faith in accordance with the requirements of the laws of the Kingdom of Saudi Arabia;

**“GOSI”** means the General Organization for Social Insurance of the Kingdom of Saudi Arabia;

**“Governmental Requests”** has the meaning given to it in Clause 13.2;

**“Income Tax Law and Income Tax By-Laws”** means the relevant laws of the Kingdom of Saudi Arabia governing income tax in the Kingdom of Saudi Arabia;

**“Insurance Policies”** means the insurance policies requested by the Employer in the Contract Data, mandated by law and specified in Clause 12 that the Consultant shall effect with Insurers in accordance with Clause 12;

**“Insurer”** means an insurer, approved by the Employer, with whom the Consultant effects the Insurance Policies;

**“IP Rights”** means all intellectual property rights including patents, rights to and in inventions, (whether patentable or not), copyright and related rights, trademarks, service marks, logos, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, know how, trade secrets and the designs contained within them and any other intellectual property rights, in each case, whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**“IT Network”** has the meaning given in Clause 2.13;

**“Key Personnel”** means the personnel of the Consultant, as named in Schedule 2 who are employed to perform key roles with respect to the provision of the Services, and such replacements as are made in accordance with the terms of this Contract;

**“Materials”** has the meaning given in Clause 16.2;

**“Project”** means the NEOM project being developed by the Employer in the Kingdom of Saudi Arabia;

**“Project Documents”** means all documents including bill of quantities, drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, manuals, as build documents, models, three-dimensional works pertaining to geography or topography or other architectural works, technical and design documents and any other copyright works, if applicable, prepared by or on behalf of the Consultant for the benefit of the Employer pursuant to this Contract;

**“Prolonged FM Period”** has the meaning given in the Contract Data;

**“Resources”** means equipment, materials, facilities, premises, utilities, transport, accommodation, stationery, staff, manpower, labour, professional services, administration services and research material;

**“Schedule”** means a schedule to this Contract;

**“Security Interest”** means any bill of sale, mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as, or having effect as, security for any payment obligation or for observing any other obligation;

**“Services”** means the consultancy services to be performed by the Consultant as described in Schedule 1 as may be varied by a Variation;

**“Sub-Contractor”** means a sub-contractor of any tier engaged by the Consultant in accordance with Clause 20.2 **in connection with the performance of the Consultant's** obligations under this Contract;

**“Tax”** means any tax (including any personal, Zakat, value added tax or withholding tax), levy, impost, duty (including customs duty), registration fee or other charge or withholding of a similar nature (including any penalty payable in connection with any failure to pay or any delay in paying any of the same) whether levied by the Government of the Kingdom of Saudi Arabia or any government outside the Kingdom of Saudi Arabia;

**“Term”** shall be as defined in the Contract Agreement;

**“Variation”** means any alteration, amendment, omission, addition or other variation to the Services agreed or determined in accordance with Clause 4;

**“Variation Notice”** means a notice requesting a Variation which is issued in accordance with Clause 4.1;

**“Variation Order”** means an order for Variation which is issued in accordance with Clause 4.3; and

**“Variation Proposal”** means a proposal for a Variation which is issued in accordance with Clause 4.2.

## 1.2 Interpretation

In this Contract, unless the context otherwise requires:

- 1.2.1 reference to a **‘Clause’** is a reference to a **Clause of this** Contract;
- 1.2.2 headings are for convenience only and shall not affect the interpretation of this Contract;
- 1.2.3 **‘include’ and ‘including’ or similar expressions are not words of** limitation;
- 1.2.4 any gender includes the other gender;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- 1.2.7 **reference to a ‘person’ includes a natural person and any organisation or entity** having legal capacity and vice versa;
- 1.2.8 a particular person includes a reference to that **person's** executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- 1.2.9 a document includes any variation or replacement of it;
- 1.2.10 references to time shall be to the time of day in the Kingdom of Saudi Arabia;

- 1.2.11 if a period of time starts on a given day or the day of an act or event, the period of time is to be calculated inclusive of that day;
- 1.2.12 **reference to a 'day', 'month' or 'year' mean a day, month or year in the Gregorian calendar;**
- 1.2.13 a statute, ordinance, code, decree or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.14 an indemnity, representation or warranty by two or more persons is given by them jointly and each of them individually;
- 1.2.15 an obligation to act in good faith does not create a fiduciary relationship between the Parties and does not, unless otherwise provided in this Contract, create an **obligation to act against the relevant Party's commercial** interests;
- 1.2.16 **a 'breach' of this Contract shall include any failure by a Party to perform its** obligations under this Contract in accordance with any standard, code, protocol, direction or timetable (including the Performance Schedule) as required by this Contract;
- 1.2.17 **reference to 'cost' includes expense;** and
- 1.2.18 wherever this Contract refers to a period of time by way of notice:
  - (A) the first day of the notice period shall be the day of deemed receipt of the notice in accordance with Clause 24; and
  - (B) the effective date for the purposes of the subject of the notice shall commence on the last day of the period of notice.

## **2. THE CONSULTANT'S OBLIGATIONS**

### **2.1 Standards of Performance**

- 2.1.1 The Consultant shall perform the Services and its other obligations under this Contract in accordance with:
  - (A) this Contract;
  - (B) Good Industry Practice;
  - (C) the protocols set out in Schedule 1;
  - (D) the requirements of any insurance procured in accordance with this Contract;
  - (E) the requirements of any relevant authorities having jurisdiction over the Consultant or with respect to the Services;
  - (F) all applicable laws;
  - (G) the environmental, health and safety and the quality assurance and quality control requirements referred to in Clause 8
  - (H) any instructions and directions mutually agreed by the Parties from time to time in accordance with this Contract.
- 2.1.2 The Consultant shall satisfy itself as to the nature and scope of the work required by the Services and that its personnel possess the appropriate skills and are sufficiently experienced, efficient and qualified to perform the tasks required of them.
- 2.1.3 The Consultant shall exercise all reasonable skill, care and diligence to be expected of a properly qualified and competent professional consultant

experienced in carrying out duties and services of the type comprised in the Services for projects of a similar size, scope and complexity to the Project.

## 2.2 The Services

The Consultant shall:

- 2.2.1 commence the Services on the Commencement Date and complete the Services by the Date for Completion;
- 2.2.2 prepare and submit the Project Documents, if any, in accordance with this Contract and any other requirements mutually agreed by the Parties;
- 2.2.3 **ascertain the Employer's requirements for the Project and, for that purpose, regularly consult with the Employer's** Representative as needed to ensure timely completion;
- 2.2.4 be liable both during the continuance of this Contract and for any such longer liability period as may be specified by law from the completion of the Services or the date of termination of this Contract, for the consequence of any act, omission, negligence, error, or lack of skill, care or diligence by the Consultant or its personnel in the performance of the Services or in respect of any liability imposed under law.

## 2.3 Interface and Coordination

The Consultant shall:

- 2.3.1 regularly consult, interface, co-ordinate and co-operate with the Employer's other consultants, contractors and any other persons as directed by the Employer where this is necessary or desirable for the proper performance of the Services. The Employer shall make sure persons available to the Consultant in order to achieve this purpose. The Consultant shall be deemed to have made allowance for such co-operation and access in the Contract Price and any programme to be complied with under this Contract; and
- 2.3.2 promptly, if at any time it identifies any inconsistency or interface problem between its Services and the work or services of other contractors or consultants engaged in relation to the Project, advise the **Employer's** Representative, who will determine whether an inconsistency or interface problem exists and, if it deems it necessary, mutually agree with the Consultant on an appropriate instruction to resolve the inconsistency or interface problem. The Consultant shall comply with any lawful instruction given to it by the Employer and mutually agreed with by the Consultant.

## 2.4 Review of Documents

The Consultant is responsible for obtaining all information, documents and other particulars necessary in order to perform the Services in accordance with this Contract.

## 2.5 Incidental Services

The Consultant agrees that the Services shall include all other services, functions and responsibilities which, although not expressly mentioned in this Contract, are necessary for, or incidental to, the proper performance of the Services in accordance with the terms of this Contract.

## 2.6 Consents

- 2.6.1 At its own cost, the Consultant shall apply for, obtain and maintain for the duration of the Term all:
  - (A) consents, approvals, certificates, permits, licences, statutory agreements and authorisations applicable to the Consultant; and
  - (B) any consents, authorisations, permits and agreements from any third parties applicable to the Consultant,



in order to perform the Services.

- 2.6.2 The Employer shall not be liable for any delay, cost or expense incurred or suffered by the Consultant arising from its failure to comply with the requirements of this Clause 2.6.

## **2.7 Resources**

- 2.7.1 The Consultant shall provide all Resources necessary for the proper execution of the Services (except to the extent expressly provided otherwise in this Contract).
- 2.7.2 All Resources shall be at the risk of the Consultant and the Employer shall have no liability for any loss of or damage to **any of the Consultant's Resources except to the extent that such loss or damage was caused by the negligence or default of the Employer.**

## **2.8 Acceleration or Deferral of Services**

The Employer may request the Consultant to accelerate or defer the provision of the Services by giving written notice to the Consultant. Any such acceleration or deferral shall not take effect unless mutually agreed between the Parties in writing.

## **2.9 Continuous Operations**

The Consultant shall take all reasonable steps necessary to ensure that the provision of the **Services does not interrupt or disturb the Employer's operations or the Project except to the extent that it is necessary to do so in order for the Consultant to be able to comply with its obligations under this Contract.**

## **2.10 Periodic and Other Reports**

- 2.10.1 The Consultant shall provide the Employer with reports as mutually agreed by the Parties in delivery of the Services.
- 2.10.2 The Consultant shall promptly advise the Employer of any matter of significant importance requiring prompt notification to the Employer and any decision required by the Employer and the deadline for providing it.

## **2.11 Communications**

The Employer may instruct the Consultant to provide to the Employer copies of all notices and other communications required to be given by the Consultant to any third party in accordance with this Contract; provided that the Consultant shall not be required to provide any such notices to the extent not permitted by law or relevant Authority.

## **2.12 Compliance and Approvals**

Reviewing or the giving of any approval, consent, comment, instruction, direction or opinion **by the Employer, the Employer's Representative or any other consultant of the Employer in connection with this Contract shall not relieve the Consultant of any of its obligations or liabilities under this Contract, except to the extent such approval, consent, comment, instruction, direction or opinion is required in connection with the performance of the Consultant's obligations or liabilities, which shall resume once received.**

## **2.13 IT Network**

- 2.13.1 The Consultant shall disclose to the Employer the names of all of the **Consultant's employees which the Consultant desires to grant access to the Employer's information technology network including all electronic sources, sites, programs, software and electronic libraries accessed remotely or on the Employer's premises including shared folders, e-mail accounts, telephone systems, computers, servers and information technology hardware (the "IT Network").**
- 2.13.2 The Consultant shall, and shall procure that its employees will, only access and use the IT Network for lawful purposes.

### **3. COMPLIANCE AND APPROVALS**

- 3.1 The Consultant shall comply with any resolution, regulation, approval, consent, instruction, resolution, regulation, direction, determination or opinion given by the Employer in accordance with this Contract.
- 3.2 **Neither the Consultant's compliance with Clause 3.1** nor any review or comment, or any failure to review or comment, by the Employer of or on any data, document, plan, schedule, programme, report or any other item in connection with this Contract shall relieve the Consultant of any of its obligations or liabilities under this Contract.
- 3.3 The Consultant shall comply fully with U.S. laws governing the representation of foreign principals in the United States and anticipates that it will register under FARA in connection with the Services to be provided under this Contract. The Employer and the Consultant acknowledge and agree that:
- 3.3.1 the **Consultant's compliance with FARA will include public filings with the U.S.** Department of Justice and such filings will include certain information relating to this Contract and the Services;
- 3.3.2 to the extent required by applicable law, the Consultant shall be permitted to submit, as part of its filings to FARA:
- (A) redacted extracts of the relevant parts of this Contract,
  - (B) information on receipts and disbursements made under this Contract; and
  - (C) details of certain Services undertaken pursuant to this Contract,
- provided that the Consultant notifies the Employer in advance of any such filings and removes or redacts any information requested by the Employer not otherwise required by law to be included; and
- 3.3.3 if the Consultant is required by applicable law to file a copy of this Contract in its entirety then the Consultant shall notify the Employer as soon as possible following notification of such requirement and shall redact all information which is not required by law to be disclosed.
- 3.4 The Employer agrees that it will cooperate with and assist Consultant in good faith in the preparation and filing of the required registration statements. The Employer and the Consultant further understand and agree that the Services to be provided by the Consultant under this Contract shall be on behalf of the Employer only and that the Consultant will not, under this Contract, provide Services to or represent any other foreign principal within the United States.
- 3.5 It is understood and agreed that the Consultant shall not lobby any federal or state members of the executive or legislative branches government or their employees and further, shall not engage in any effort on or behalf of the Employer requiring the Consultant by law to be registered as a lobbyist under federal or state lobbying statutes.

### **4. VARIATIONS**

- 4.1 At any time, the Employer may give the Consultant a notice requesting a Variation (a **"Variation Notice"**).
- 4.2 Promptly after receipt of the Variation Notice and before the Consultant carries out the Variation, the Parties shall confer regarding the Variation Notice and mutually agree on the following:
- 4.2.1 a detailed breakdown of any adjustment to this Contract that would be necessary in order to enable the Consultant to perform its obligations under this Variation Notice;

- 4.2.2 any adjustment to the Performance Schedule;
- 4.2.3 the steps the Consultant proposes to take to implement the proposed Variation; and
- 4.2.4 a detailed breakdown of any increase or decrease in the Contract Price as a result of the proposed Variation.
- 4.3 To the extent the Parties are able to mutually agree on the terms of the Variation, the Parties shall execute a Variation Order setting forth the agreed terms of the Variation.
- 4.4 If the Parties have not reached agreement regarding the Variation, the Variation shall not go into effect.
- 4.5 A Variation may involve the removal of any part or parts of the Services and the Consultant agrees, if the Variation is mutually agreed, that the Employer may engage others to perform the part or parts so omitted. The Consultant acknowledges that any one or more removals as a result of mutually agreed upon Variations shall not constitute a basis to allege that the Employer has repudiated this Contract despite the extent or timing of the omission.
- 4.6 The Consultant is not entitled to any payment (pursuant to this Contract or otherwise at law) in relation to any variation of the Services unless that variation has been agreed or determined in accordance with this Clause 4.
- 4.7 No Variation issued in accordance with this Contract will vitiate or invalidate this Contract.
- 4.8 During the Term of this Contract, the Consultant shall maintain a register listing all Variation Notices and Variation Orders issued under this Contract. Such registers shall be provided to the Employer on request.

## **5. EMPLOYER SUPPLIED INFORMATION**

- 5.1 **Any Employer Supplied Information has been or shall be provided only for the Consultant's** convenience, and has not been and shall not be relied upon by the Consultant for any purpose (including entering into this Contract or performing its obligations under this Contract).
- 5.2 The Employer does not assume any responsibility or duty of care with respect to the Employer Supplied Information. The Consultant shall make its own assessment on any Employer Supplied Information received, which shall not relieve, alter, limit or change the **Consultant's obligations under the Contract.**
- 5.3 Except as expressly provided by this Contract, the Consultant shall not be entitled to any claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Employer Supplied Information or the non-provision of any other information by the Employer.
- 5.4 The Consultant obtains no IP Rights in the Employer Supplied Information and hereby waives any claim to any such IP Rights and, unless otherwise agreed, the Employer Supplied Information shall only be used by the Consultant for the purpose of performing the Services.

## **6. RECORDS**

- 6.1 The Consultant shall maintain complete and accurate books and records in connection with the performance of the Services (including copies of all Variation Notices and Variation Orders issued under this Contract) and shall use commercially reasonable efforts to procure that its Sub-Contractors do the same. All such books and records shall be available for inspection by the Employer at times to be mutually agreed, and the Employer shall be entitled to take copies of all or any part of such books and records.
- 6.2 The Consultant shall:
  - 6.2.1 maintain all records for ten (10) years from the date from the termination of this Contract
  - 6.2.2 if reasonably requested by the Employer, make such records available for inspection by the Employer;

6.2.3 submit to the Employer:

- (A) all reports prescribed in the Contract Data, at the times and in the form and number specified in the Contract Data; and
- (B) such other reports in connection with the Project as may reasonably be required by the Employer;

6.2.4 attend all meetings relating to the Project as required and mutually agreed by the Parties; and

6.2.5 review or provide (as applicable) all information and recommendations reasonably required at meetings referred to in Clause 6.2.4, and ensure that its representatives attending such meetings are suitably informed, knowledgeable and authorised to respond to or agree on items raised at these meetings,

and the Consultant shall use commercially reasonable efforts to procure that its Sub-Contractors do the same.

## 7. PERSONNEL

7.1 The Consultant shall be responsible for the selection, hiring, supervision, transportation and the payment of remuneration and associated benefits (including the withholding and remitting of all relevant taxes) of its personnel, including any Key Personnel.

7.2 The Consultant shall provide sufficient numbers of personnel to properly and diligently complete the Services. Such personnel shall be suitably qualified, experienced and competent to carry out the roles assigned to them. The **Consultant shall, at the Employer's** request, provide the Employer with personnel bios reflecting the competency of such personnel (including, if relevant, details of previous experience and qualifications).

7.3 The Consultant shall give the Employer at least **ten (10) Business Days' notice if it intends** to replace any Key Personnel and the Employer shall have the right to refuse such replacement if it is not reasonably satisfied with the ability of the replacement individual. If at any time the Employer reasonably determines that a member of the Key Personnel is incapable of performing to the standards expected of such a position, the Employer may request the replacement of such member and the Consultant shall use its best endeavours to promptly find a suitable replacement. Any approved replacement must be fully engaged with the Services no later than two (2) Business Days from the date the outgoing individual ceased to be fully engaged with the Services.

7.4 The Consultant shall:

- 7.4.1 ensure that Key Personnel and supervisory personnel are fluent in English;
- 7.4.2 **ensure that its personnel comply with all of the Employer's reasonable and lawful policies and regulations from time to time while on the Employer's** premises;
- 7.4.3 comply with all applicable labour laws and regulations and shall ensure that all of its personnel maintain appropriate immigration and labour permits;
- 7.4.4 adopt employment terms and conditions which are no less favourable than local norms applicable to the Consultant; and
- 7.4.5 comply with all local immigration and work permitting requirements and laws relating to the employment of local labour and expatriate personnel applicable to the Consultant.

7.5 The Consultant shall:

- 7.5.1 at all times be responsible and liable for the welfare and all acts or omissions of its personnel and those of its Sub-Contractors, except as directly caused by the Employer;
- 7.5.2 at all times maintain discipline and good order amongst its personnel and those of its Sub-Contractors; and

7.5.3 use reasonable endeavours to prevent unlawful, riotous and disorderly conduct by its personnel.

In the event of any such behaviour or failure by the Consultant, the Consultant shall bear the cost of delays and any other direct or indirect costs of both the Consultant and the Employer.

7.6 **The Consultant shall, or shall at the Employer's reasonable request, promptly remove and** replace any person failing to maintain discipline and good order with another suitably qualified, experienced and competent person. The removal and replacement of any such person shall be at the cost of the Consultant.

7.7 The Consultant shall provide, or procure the provision of, all training for its personnel and, **where mutually agreed between the Parties, the Employer's personnel, in accordance with this Contract and Good Industry Practice at the Consultant's** cost.

## **8. ENVIRONMENTAL HEALTH & SAFETY AND QUALITY ASSURANCE/CONTROL**

8.1 The Consultant shall carry out the Services in accordance with all applicable environmental health and safety and quality assurance and quality control policies, guidelines, standards, procedures and requirements of the Employer with respect to the Services and all relevant authorities (whether contained in applicable laws, protocols, plans, manuals or otherwise) and any other requirement which the Employer may reasonably request from time to time.

8.2 The Consultant shall not be entitled to any additional compensation for complying with this Clause 8.

## **9. PAYMENT**

### **9.1 Pre-condition**

No payment of any kind shall be made by the Employer to the Consultant in connection with or in relation to this Contract until the Employer receives a valid invoice in conformance with Clause 9.3 in relation to the payment to be made.

### **9.2 Contract Price**

9.2.1 the Employer shall pay the Consultant the Contract Price in accordance with Schedule 2 and this Clause 9.

9.2.2 The Consultant shall not be entitled to any payment in connection with this Contract, other than the Contract Price and as provided in this Clause 9 and any agreed upon business travel expenses as set forth in Schedule 2.

9.2.3 The Consultant covenants that the Contract Price is based on its study of all the details of the Services required under this Contract.

9.2.4 The Consultant shall have no right to claim for any compensation or any increase in the Contract Price (or the prices in the schedule of rates in Schedule 2), throughout the Term, despite any increase in the prices of services, materials or any other costs, or any difference in the exchange rates which may take place later.

### **9.3 Invoices**

9.3.1 The Consultant shall issue invoices for the periods or at the times as set out in the Contract Data.

9.3.2 The Consultant shall give the Employer a correct and complete invoice which shall include all details specified by the Employer at or prior to the commencement of the Services. It is the responsibility of the Consultant to obtain this information and the Consultant's failure to provide such information may delay payment by the Employer.

9.3.3 If the Employer objects to any invoice (in whole or in part), it shall:

- (A) notify the Consultant within ten (10) Business Days after receiving such **invoice of the objection and specify the reason for the Employer's** objection; and
  - (B) pay in accordance with this Clause 9 any part of the invoice to which the Employer does not object provided that the Consultant issues a new invoice in accordance with this Clause 9 for that part of the original invoice to which the Employer does not object.
- 9.3.4 If the Consultant receives an objection notice from the Employer in accordance with Clause 9.3.3(A), the Consultant shall amend and submit a revised invoice accordingly. If the Employer further objects to a revised invoice (in whole or in part), then the Parties shall confer in good faith regarding any further changes to the invoicing procedures. The Consultant shall not be required to submit more than three (3) invoices absent the **Consultant's** failure to comply with reasonable, agreed upon invoicing procedures. The Employer shall pay such invoice within the time period referred to in Clause 9.4.1(A), provided that the Employer has accepted the Services provided in relation to such invoice.
- 9.3.5 The Employer shall have no obligation to pay any invoice (in whole or in part) which it has not received from the Consultant within six (6) months after the date on which the Consultant performed the Services or incurred any cost to which such invoice relates.
- 9.3.6 The Employer shall have no obligation to pay any invoice (in whole or in part) to which it has objected in accordance with Clause 9.3.3 if the Employer has not received a correct and complete revision of that invoice within six (6) months after the date on which the Employer notified the Consultant of its objection to that invoice.

#### 9.4 Payment Terms

- 9.4.1 The Employer shall make payments to the Consultant:
- (A) within forty five (45) Business Days of receipt by the Employer of an invoice that complies with this Clause 9;
  - (B) by direct transfer to a bank nominated by the Consultant; and
  - (C) in the currency set out in the Contract Data.
- 9.4.2 Payments made by the Employer shall:
- (A) **be without prejudice to any of the Employer's** rights;
  - (B) not be construed as a waiver of its right to object to any invoice so paid; and
  - (C) **not indicate, or be deemed to indicate, the Employer's acceptance or approval of the Consultant's performance of its obligations under this** Contract to which the invoice relates.
- 9.4.3 If the Employer makes any payment to the Consultant in accordance with this Contract by direct transfer to a bank nominated by the Consultant, the Consultant shall bear all charges imposed in connection with such transfer including charges **imposed by the Employer's bank, the bank nominated by the Consultant and any** intermediary.

#### 9.5 Set off

Notwithstanding any other provision of this Contract, the Employer may set off or deduct from any amounts due to the Consultant:

- 9.5.1 any amount due, or which it is reasonably apparent may become due, from the Consultant to the Employer under this Contract;

- 9.5.2 any amount paid by the Employer to a third party where the Consultant was obliged to make such payment in accordance with this Contract but failed to do so;
- 9.5.3 any deduction or withholding tax required by law; and
- 9.5.4 any amount due to the Employer from an Insurer which is paid to the Consultant rather than directly to the Employer.

#### **9.6 Payment of Sub-Contractors**

Upon receipt of payment under this Contract, the Consultant shall:

- 9.6.1 promptly pay any of its Sub-Contractors, personnel and suppliers in accordance with their contracts any part of the payments it receives under this Contract that are attributable to the works or services performed and/or goods supplied by each Sub-Contractor, personnel and supplier in connection with this Contract; and
- 9.6.2 if so requested by the Employer, give the Employer a notice confirming that it has complied with Clause 9.6.1.

#### **9.7 Overpayment and Debt Recovery**

- 9.7.1 If the Parties agree or it is determined that the Employer has, for whatever reason, overpaid the Consultant with respect to any invoice, the Consultant shall, at its cost, refund the full amount of that overpayment within five (5) Business Days after that agreement or determination to a bank account nominated by the Employer.
- 9.7.2 The Employer may separately recover from the Consultant any amount owed by the Consultant to the Employer as a debt due from the Consultant.
- 9.7.3 The **Employer's** right to recover overpayments and debts from the Consultant shall survive the expiry or termination of this Contract for any reason and any acceptance **or approval by the Employer of the Consultant's performance of its obligations** under this Contract.

#### **9.8 Variations**

The payment procedure referred to in this Clause 9 shall also apply to any payments to be made by the Employer to the Consultant for any mutually agreed Variations.

### **10. TAXES AND FEES**

- 10.1 The Consultant shall be liable for and shall pay in a timely manner:
  - 10.1.1 all Taxes levied (whether directly or indirectly) in connection with this Contract;
  - 10.1.2 all payments relating to sponsorship arrangements or local partnerships undertaken by the Consultant to establish and carry out its business in the Kingdom of Saudi Arabia;
  - 10.1.3 all national insurance, social security, Zakat and other such withholdings or contributions which are payable in connection with the Consultant carrying out its business and performing its obligations under this Contract; and
  - 10.1.4 all other costs, fees, commissions and royalties incurred directly or indirectly in connection with this Contract.
- 10.2 The Consultant indemnifies, defends and holds harmless the Employer and its Affiliates, officers, directors, employees, agents and contractors against all claims, liabilities, actions and costs (including all legal fees and costs on a full indemnity basis) arising in connection with any Taxes and fees including those referred to in Clause 10.1.
- 10.3 The Consultant has taken into consideration its obligations under this Contract with respect to all Taxes and fees including those referred to in Clause 10.1 and has accounted for such obligations in the Contract Price.

- 10.4 Where the Consultant is required by this Contract to reimburse or indemnify the Employer for any actual cost or expense, the Consultant will reimburse or indemnify (as the case may be) the Employer for the full amount of the cost or expense.
- 10.5 Any withholding taxes applicable under the Kingdom of Saudi Arabia's Income Tax Law and Income Tax By-Laws on the payments to be made to the Consultant under the Contract, shall be deducted at the time of the payment, from the gross amount of the payment being made to the Consultant, in accordance with the rate applicable on such payment under the Income Tax Law and Income Tax By-Laws. For the avoidance of doubt, gross payment for withholding taxes purposes includes the reimbursement of out-of-pocket expenses, if any, billed by the Consultant.
- 10.6 If the Employer makes any payment under the Contract in respect of which it is required to apply applicable withholding taxes, the Employer shall furnish to the Consultant a withholding tax certificate or other evidence of such withheld taxes, upon written request by the Consultant, evidencing that such taxes have been withheld and paid. In case the Consultant requires the withholding tax certificate to be attested by the GAZT, the Employer shall facilitate the Consultant to get the certificate attested by the GAZT provided that the Consultant will reimburse the Employer for all the professional charges and other related cost incurred by the Employer to secure such attestation.
- 10.7 In the event any payment being made by the Employer to the Consultant under the Contract is subject to tax relief (i.e. zero rate or a reduced rate of tax) under the provisions of a double tax treaty, the Employer shall apply withholding tax in accordance with the rate applicable on such payment under the Kingdom of Saudi Arabia's Income Tax Law and Income Tax By-Laws, unless the Consultant provides to the Employer a confirmation/pre-approval from the GAZT to the effect that income derived by the Consultant under the Contract is not subject to tax (or subject to zero rate or a reduced rate of tax) in the Kingdom of Saudi Arabia under the provision of the said double tax treaty.

## **11. WARRANTIES**

### **11.1 Corporate Warranties**

The Consultant represents, warrants and undertakes that:

- 11.1.1 it is a company properly instituted and incorporated under the laws of the state of Delaware and has the corporate power to own its assets and carry on its business;
- 11.1.2 it has the corporate power and authority to enter into and to exercise its rights and perform its obligations under the Contract;
- 11.1.3 it has the full power and all necessary authorisations to enter into and comply with its obligations under this Contract; and
- 11.1.4 the obligations expressed to be assumed by the Consultant under the Contract are legal, valid, binding and enforceable to the extent permitted by applicable law.

### **11.2 Non-Infringement Warranties**

The Consultant represents, warrants and undertakes that:

- 11.2.1 the IP Rights utilised, licensed or granted by the Consultant in connection with this Contract do not infringe any third party rights;
- 11.2.2 the entry into and performance by it of the services contemplated by this Contract do not and shall not infringe or conflict with:
  - (A) any applicable law, regulation, judicial or official order or similar enactment;
  - (B) the constitutional documents of the Consultant;
  - (C) the rights of any third party or cause it to be in breach of any obligations to a third party; or
  - (D) any document which is binding upon the Consultant to an extent or in a manner which has or would reasonably be expected to have a materially



adverse effect on the operations of the Consultant or the performance of its obligations under this Contract; and

- 11.2.3 it shall not enter into any contract or accept any obligation which is inconsistent or **incompatible with the Consultant's obligations under this** Contract.

### 11.3 Performance Warranties

The Consultant represents, warrants and undertakes that:

- 11.3.1 it shall perform its obligations under this Contract in a competent and professional manner and in accordance with Good Industry Practice;
- 11.3.2 it shall perform its obligations under this Contract in compliance with all applicable laws, regulatory requirements, decrees, codes of practice, licences and permits and shall not do or permit anything to be done which might cause or otherwise result in a breach by the Employer of any of the same;
- 11.3.3 it shall perform its obligations under this Contract so that all of its deliverables:
- (A) are free from deficiencies and omissions; and
  - (B) conform with all specifications and requirements agreed between the Parties or set out in this Contract.
- 11.3.4 The Consultant shall promptly re-perform or remedy, free of charge and without any extension of time, any failure to perform its obligations under this Contract or any failure of a deliverable to comply with this Contract (including compliance with any warranty).

### 11.4 No Limitation

**The Consultant's warranties in this Clause** 11 shall not be interpreted as a limitation upon, but are in addition to, all other warranties and guarantees expressed in this Contract or implied by law, which shall apply in all respects to the performance of its obligations under this Contract.

## 12. INSURANCE

- 12.1 **Without limiting the Consultant's obligations and responsibilities in connection with this** Contract, the Consultant shall, at its own cost, insure or cause to be insured with an Insurer, the Insurance Policies for the Term and in accordance with this Contract and all applicable laws.

- 12.1.1 third party liability insurance to contain cross liability clause in the joint names of the Employer and the Consultant to cover liability for physical loss or damage to property and personal injury or death. Such third party liability insurance shall provide for the amount not less than SAR 1,000,000 per claim and not less than SAR 2,000,000 in the aggregate or any other currency equivalent; and

- 12.1.2 professional indemnity insurance for protection from claims arising out of or in connection with the performance of the Services caused by negligent error, omission or acts for which the insured is liable. Such professional indemnity insurance shall provide for the amount not less than SAR 8,000,000 per claim and in the aggregate or any other currency equivalent and Consultant warrants that any retroactive date under the policy shall precede the Effective Date; and that either continuous coverage will be maintained or an extended reporting period will be exercised for a period of two (2) full years after the expiration or cancellation of the policy.

- 12.2 The Consultant shall ensure that the third-party liability Insurance Policy includes provisions that the Insurer has agreed to waive all rights of subrogation against the Employer, its Affiliates, officers, directors, employees, agents and contractors.

- 12.3 Within fifteen (15) days after the Effective Date and before it commences performing its obligations under this Contract, the Consultant shall give the Employer the certificates of insurance.
- 12.4 If the Consultant fails to effect or keep in force the Insurance Policies, the Employer may terminate this Contract.
- 12.5 All liabilities in excess of the indemnities and all deductibles provided under the Insurance Policies shall be for the account of and paid by the Consultant.

### **13. INDEMNITY AND LIABILITY**

#### **13.1 Employer's Indemnity**

The Consultant indemnifies, defends and holds harmless the Employer and its Affiliates, and their respective officers, directors, employees, agents and contractors against any loss, damage or cost (including all legal fees and costs on a full indemnity basis) arising out of or in connection with the entry into this Contract, the performance or breach of the **Consultant's** obligations under this Contract (including the obligations set out in Clause 8 and Clause 12), any governmental or civil investigations, or inquiries, subpoenas, discovery requests, or any non-compliance with or breach of any law or any infringement or alleged infringement of third party rights (including IP Rights), misrepresentation, gross negligence, fraud or wilful misconduct by the Consultant, its principals, shareholders, members, Affiliates, officers, directors, employees, agents, contractors or Sub-contractors.

#### **13.2 Consultant's Indemnity**

**The Employer will indemnify the Consultant and the Consultant's principals, shareholders, members, officers, directors, employees, agents, Affiliates, independent contractors and representatives (each, a "Covered Person"), for direct costs and expenses incurred by the Covered Person in respect of any governmental or civil investigations, inquiries, subpoenas, discovery requests, (collectively the "Governmental Requests") in any manner related to, arising out of or resulting from the Employer's retention of the Consultant, provision of the Services or the performance of the Consultant's duties under this Contract, except for Governmental Requests arising out of or resulting from:**

- (A) **the material breach of the Consultant's obligations under this Contract** (including, but not limited to, the obligations set out in Clause 8 and Clause 12),
- (B) any non-compliance with or material breach of any law or any infringement or alleged infringement of third party rights (including IP Rights),
- (C) misrepresentation, gross negligence, fraud or wilful misconduct by,

a Covered Person. The Employer agrees to reimburse the Consultant for such direct costs and expenses (including, without limitation, reasonable fees and disbursements of counsel and costs of vendors reasonably required to assist in the recovery, review and production of electronically stored data) incurred in connection with the Governmental Requests.

- 13.3 Subject to Clause 13.4 and to the maximum extent permitted by law, neither Party shall be liable for any indirect, exemplary, punitive or consequential loss or damage including damages or claims in the nature of lost revenue, income, profits or investment opportunities whether arising under claims in contract or at law, unless provided for under this Contract.
- 13.4 **Despite any other provision of this Contract, the Consultant's liability to the Employer shall not be limited with respect to:**
  - (A) any breach by the Consultant of Clause 15 or 16;

- (B) any expenditure the Consultant is required to make at its own cost in connection with the performance of the Services including any costs incurred in connection with remedying any defect;
- (C) any personal injury or damage to property to the extent that it is caused directly or indirectly by an act or omission by or on behalf of the Consultant; or
- (D) any claim the Employer has against the Consultant with respect to any misrepresentation, gross negligence, fraud or wilful misconduct.

13.5 Subject to Clause 13.4 and except to the extent determined to have resulted from the **Consultant's gross negligence, fraudulent behaviour or wilful misconduct, each Party's** liability in connection with this Contract shall not exceed the amount of the Contract Price the Employer has paid to the Consultant.

#### **14. NO SECURITY**

14.1 The Consultant shall:

- 14.1.1 not create, file, claim or register any Security Interest;
- 14.1.2 not do any act, deed or thing which would result in the creation of any Security Interest; and
- 14.1.3 use its commercially reasonable efforts to prevent any Security Interest from being created, filed, claimed or registered by a third party or any Affiliate, officer, director, employee, agent, contractor, Sub-Contractor or supplier of the Consultant,

over any real or other property of the Employer and shall procure that its contracts with Sub-Contractors, contractors and suppliers engaged by Consultant in connection with this Contract contain obligations on the counterparties to the same effect.

#### **15. CONFIDENTIALITY**

15.1 Each Party shall:

- 15.1.1 not disclose any Confidential Information except as permitted herein;
- 15.1.2 keep the Confidential Information in safe and secure custody and protected against theft, damage, loss or unauthorised access;
- 15.1.3 not, whether during the Term or at any time thereafter, directly or indirectly:
  - (A) use, exploit, copy or modify any Confidential Information other than for the sole purpose of performing its obligations under this Contract; or
  - (B) authorise or permit any third party to do the same without the prior written consent of the disclosing Party; and
- 15.1.4 limit access to the Confidential Information to those of its Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or advisors who reasonably require such information for the purposes of this Contract and take reasonable steps to ensure that each of them shall observe the restrictions as to confidentiality, disclosure and use as are set out in this Contract.

15.2 The obligations in this Clause 15 shall not apply to any Confidential Information to the extent that the receiving Party is able to demonstrate that the Confidential Information was:

- 15.2.1 at the time of receipt by the Party, in the public domain, or subsequently came into the public domain through no fault of the receiving Party, its Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or advisors; or
- 15.2.2 lawfully received by the receiving Party from a third party on an unrestricted basis.

15.3 No Party shall advertise, publicise or release statements in connection with this Contract **without the other Party's prior written** consent.

- 15.4 The receiving Party shall not be in breach of this Clause 15 if it discloses Confidential Information to the extent required by law, regulation or order of a competent authority provided that to the extent practicable in the circumstances, the disclosing Party has been given reasonable advance notice of the intended disclosure and a reasonable opportunity to **challenge the same at disclosing Party's sole** expense.
- 15.5 To the extent requested in writing by the disclosing Party, the receiving Party shall destroy the Confidential Information and, to the extent requested in writing confirm in writing to the disclosing Party that it has complied with any such request; provided that the receiving Party shall be entitled to retain a copy of the Confidential Information, subject to the restrictions on disclosure set forth herein, in connection with any applicable legal, regulatory or policy requirements and shall be under no obligation to destroy materials stored on **"back-up"** drives in the ordinary course of business.
- 15.6 For the avoidance of doubt, the Employer shall not be in breach of this Clause 15 for utilizing any Confidential Information as a result of the Services provided by the Consultant.
- 15.7 The obligations in this Clause 15 shall survive the expiry or termination of this Contract for any reason.

## **16. INTELLECTUAL PROPERTY**

- 16.1 All IP Rights belonging to a Party (or which it uses under a licence from a third party) prior to the Effective Date, **or developed by a Party independently of this Contract ("Background IP")**, shall remain vested in that Party (or the relevant third party licensor).
- 16.2 Immediately upon creation or performance, all rights, title, interest, property and IP Rights in:
- 16.2.1 any works and services (including deliverables);
  - 16.2.2 all documents, data, records, logs, drawings, specifications, processes, schedules, computer programs, object code, source code, network designs, notes, sketches, findings, interim and final reports, inventions, improvements, modifications, discoveries, tools, scripts and all other related documents (whether machine readable or not); and
  - 16.2.3 any other items or materials,
- arising from or created, produced or developed by the Consultant (whether alone or jointly with others) under or in connection with this Contract (collectively, the **"Materials"**) shall vest in and remain the exclusive property of the Employer.
- 16.3 The Consultant irrevocably and unconditionally assigns and transfers to the Employer, and shall procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors assign and transfer to the Employer, all rights, title, interest, property and IP Rights in and to the Materials.
- 16.4 The Consultant irrevocably and unconditionally waives (and shall procure its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors to waive) in favour of the Employer any IP Rights it has or may have at law or otherwise to the Materials, including any moral rights which the Consultant might be deemed to possess under any laws in respect of any Materials.
- 16.5 If any IP Rights in the Materials do not vest in the Employer under Clause 16.2 or Clause 16.3, the Consultant shall (and shall procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors shall):
- 16.5.1 do everything reasonably necessary or requested by the Employer either during the Term, or after the expiry or termination of this Contract, to enable the Employer to own the IP Rights in the Materials including:
    - (A) formally assigning those rights to the Employer;
    - (B) assisting the Employer to obtain those rights; and/or
    - (C) transferring (as applicable) registration of those rights to the Employer; and

- 16.5.2 not, and not purport to, encumber, sell, license, or do anything which would **otherwise be contrary to the Employer's ownership of such IP Rights.**
- 16.6 Until such time as the IP Rights in the Materials have fully vested in the Employer in accordance with this Clause 16, the Consultant grants (and shall procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors grant) to the Employer an exclusive, irrevocable, royalty-free and otherwise unrestricted licence to use such IP Rights including the right for the Employer to sub-licence such licence.
- 16.7 The Consultant grants (and shall procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors grant) to the Employer a non-exclusive, irrevocable, royalty-free and otherwise non-transferable licence to use any Background IP that forms part of or is incorporated into the Materials. Notwithstanding the foregoing, the Employer shall be granted the right to sub-licence such licence within its own organization, including Affiliates.
- 16.8 After the IP Rights in the Materials are owned by the Employer, the Consultant shall have the non-exclusive, non-transferable, irrevocable, non-sublicenceable and royalty-free right during the Term to use the Materials solely in connection with its performance of its obligations under this Contract.
- 16.9 **The Consultant shall not use any of the Employer's trade marks, brands or logos for any purpose without the Employer's prior consent.**
- 16.10 Where the Employer has given its **consent to use the Employer's trade marks, brands or logos**, the Consultant shall use those trade marks, brands and logos strictly in accordance **with the Employer's consent and its applicable policies, guidance and** instructions.
- 16.11 The obligations in this Clause 16 shall survive the expiry or termination of this Contract for any reason.

## 17. SUSPENSION

- 17.1 At any time and for any reason, the Employer may give the Consultant written notice suspending (in whole or in part) the performance of **the Consultant's obligations under this Contract** for a period not to exceed sixty (60) calendar days.
- 17.2 **The effective date of any suspension of the performance of the Consultant's obligations** under this Contract shall be the date on which the Consultant receives the notice of suspension or such later date as may be specified in such notice.
- 17.3 Unless the suspension is directly or indirectly due to a breach of this Contract by the Consultant, the Employer shall pay to the Consultant any reasonable direct costs arising from the suspension which are incurred by the Consultant in the course of performing its obligations under this Contract up to and including the effective date of the suspension. Those direct costs incurred by the Consultant shall be set out in an invoice issued by the Consultant in accordance with Clause 9.
- 17.4 If a suspension of this Contract pursuant to Clause 17.1 exceeds sixty (60) calendar days, the Parties shall have the right to terminate this Contract upon ten (10) Business Days written notice.
- 17.5 The Consultant may, by written notice to the Employer, suspend the performance of the Services hereunder if the Employer fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute, provided that such notice of suspension (i) shall specify the nature of the failure and (ii) shall provide to the Employer a period of forty five (45) Business Days to remedy such failure prior to the commencement of the suspension. If the Consultant has suspended the performance of the Services for more than forty five (45) Business Days, the Consultant shall be allowed to terminate the Contract following a thirty **(30) calendar days' notice.**

## 18. NON-SOLICITATION

During the Term and for twelve (12) months following the date of termination or expiration of this Contract, the Employer will not solicit, attempt to solicit, assist others to solicit, hire, or

assist others to hire for employment or for the performance of services any person who is an officer, manager or employee (excluding lawyers, accountants and other professional service providers) of the Consultant. Notwithstanding the foregoing, this Clause shall not apply to any employment by the Employer as a result of a public advertisement of a position or the Employer's utilization of a recruiter, and such officer, manager or employee was not intentionally contacted as a result of their current employment with the Consultant.

## 19. TERMINATION

19.1 Either Party may terminate this Contract, or any part thereof, at any time for its convenience **by giving at least thirty (30) days' notice of termination. Following such termination the Employer shall pay to the Consultant:**

19.1.1 such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date of such termination; and

19.1.2 any reasonable direct costs of demobilisation (excluding any cost of redeploying machinery, equipment or personnel or repatriating personnel) arising from the termination which are incurred by the Consultant as a direct result of the termination,

as are set out in an invoice issued by the Consultant in accordance with Clause 9.

19.2 The Employer may terminate this Contract, or any part thereof

19.2.1 by giving immediate notice of termination if:

(A) the Consultant becomes or is deemed to be insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory (other than for solvent reconstruction), passes a resolution for its winding up, has a receiver, manager or administrator, trustee or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt;

(B) the Consultant is legally prohibited or restricted from performing its obligations under this Contract;

(C) the Consultant or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or suppliers is convicted of any offence or is otherwise guilty of serious misconduct or any conduct **that, in the Employer's opinion, does or may bring the Consultant (or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or suppliers), the Employer (or any of its Affiliates, officers, directors, employees, agents, contractors or suppliers) or its or their business, products or services into disrepute;** or

(D) the Consultant commits, whether directly or indirectly through others, any acts of adulteration, deception, manipulation, bribery or other acts harmful **or damaging to the Employer's interest;**

19.2.2 **by giving at least ten (10) Business Days' notice of termination** if:

(A) the Consultant commits a breach of any of its material obligations under this Contract; or

(B) the Consultant commits persistent breaches of its obligations under this Contract;

19.2.3 **by giving at least ten (10) Business Days' notice of termination** following the issuance of a default notice and the expiry of a twenty eight (28) day cure period commencing from the date of the default notice, if the Consultant commits a breach of its non-material obligations under this Contract, unless the Consultant has remedied the breach within the cure period to the reasonable satisfaction of the Employer;

- 19.2.4 by giving immediate notice of termination following the issuance of a default notice and the expiry of a seven (7) day cure period commencing from the date of the default notice, if the Consultant suspends or abandons the performance of its obligations under this Contract (in whole or in part), unless the Consultant recommenced work within the cure period to the reasonable satisfaction of the Employer;
- 19.2.5 by giving notice in accordance with Clause 21.9 for the reasons set out therein.
- 19.3 If the Employer terminates this Contract on any of the grounds referred to in Clause 19.2, the Employer shall pay to the Consultant such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date of the termination as are set out in an invoice issued by the Consultant in accordance with Clause 9 less:
- 19.3.1 all costs and damages arising from such breach; and
- 19.3.2 costs incurred by the Employer to appoint a third party to complete the performance **of the Consultant's obligations under this Contract.**
- The Employer's deduction of the above costs and damages from payments due to the Consultant shall not prejudice any other right the Employer has in connection with this Contract or as a result of the Consultant's breach of this Contract.**
- 19.4 If this Contract is terminated for any reason:
- 19.4.1 the Parties shall cease further performance of their obligations under this Contract after the effective date of the termination and the Consultant shall take all such actions in this regard as reasonably directed by the Employer;
- 19.4.2 the Parties shall each retain all rights and claims which arose on or prior to the effective date of termination;
- 19.4.3 the Parties shall be released from any further obligations in connection with this Contract;
- 19.4.4 the Consultant shall use its best endeavours to mitigate or minimise all damage and cost suffered or incurred by the Employer, the Consultant and third parties in **connection with the termination including the Consultant's costs of demobilisation;**
- 19.4.5 the Consultant shall promptly deliver to the Employer or otherwise dispose of, as directed by the Employer:
- (A) all Confidential Information, except as permitted to be retained herein;
- (B) all items to which the Employer has any right, title, interest, property or IP Rights arising in connection with this Contract or otherwise;
- (C) all deliverables (whether completed or not) and all related documents, materials and information that are reasonably required by the Employer in order to be able to complete such deliverables; and
- (D) any other documents, materials and property belonging to the Employer or its Affiliates, officers, directors, employees, agents or contractors, which are in the possession or control of the Consultant, or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or suppliers and the Consultant shall, upon the written request of the Employer, certify in writing to the Employer that the same has been done.
- 19.5 The obligations in this Clause 19 shall survive the expiry or termination of this Contract for any reason.

## **20. ASSIGNMENT AND SUB-CONTRACTING**

### **20.1 Assignment**

- 20.1.1 The Employer may assign, novate or permit to be taken as security the whole or any part of this Contract or any benefit or interest in or under this Contract without the consent of the Consultant and shall inform the Consultant of such event in due time.
- 20.1.2 The Consultant shall not assign, novate or permit to be taken as security the whole or any part of this Contract or any benefit or interest in or under this Contract without the prior consent of the Employer.

### **20.2 Sub-contracting**

- 20.2.1 The Consultant shall not sub-contract the whole or any part of the performance of its obligations under this Contract without the prior consent of the Employer.
- 20.2.2 **Despite the Employer's consent to the Consultant sub-contracting** any of the performance of its obligations under this Contract, the Consultant shall remain liable and responsible to the Employer for the proper performance by the **Sub-Contractor of the Consultant's obligations under this Contract**.
- 20.2.3 The Consultant acknowledges that the Employer:
  - (A) may, at any time, directly communicate with a Sub-Contractor in relation to the provision of the services under its sub-contract provided that the Employer shall not, during the Term, be permitted to give instructions to the Sub-Contractor as to the manner in which those services are provided; and
  - (B) may enter into any agreement or arrangement with a Sub-Contractor in relation to the provision of any services by the Sub-Contractor to the Employer including in relation to services which are contemplated by the sub-contract between the Consultant and the Sub-Contractor.

## **21. FORCE MAJEURE**

- 21.1 Force Majeure means any event or circumstance not within the reasonable control of a Party and which, by the exercise of due diligence and the level of skill, prudence and foresight **generally expected of a person in the Party's position, that the Party is not** reasonably able to foresee, prevent, avoid, control or overcome including strikes, lockouts, bans, slowdowns (excluding those occurring among the employees of the Consultant or its Sub-Contractors) or other industrial disturbances of a general nature, acts of a public enemy, wars, terrorism, blockades, insurrections, riots, sabotage, epidemic or quarantine, landslides, earthquakes, floods, sand storms, lightning, civil disturbances, fire or explosions.
- 21.2 The following matters shall not constitute Force Majeure under this Contract:
  - 21.2.1 lack of finances or funds, or inability to borrow the same;
  - 21.2.2 an obligation to pay any amount;
  - 21.2.3 general economic conditions and exchange rate fluctuations;
  - 21.2.4 the financial condition of the Consultant or any Sub-Contractor;
  - 21.2.5 failure of any Sub-Contractor to perform its obligations; or
  - 21.2.6 equipment breakdown resulting from wear and tear, lack of maintenance or the failure to carry sufficient spare parts.
- 21.3 If there is any Dispute as to whether an event or circumstance constitutes Force Majeure or whether or to what extent a Party is affected by Force Majeure, the Party claiming to be affected by Force Majeure shall bear the burden of proving that the event or circumstance constitutes Force Majeure and that it is so affected.



#### 21.4 Consequences of Force Majeure

- 21.4.1 If a Party is unable to comply with its obligations under this Contract as a result of **Force Majeure, that Party's performance of the obligations affected by Force Majeure** shall be suspended in whole or in part to the extent that, and for the duration which, that **Party's** ability to perform those obligations is affected by Force Majeure.
- 21.4.2 The Consultant may request an adjustment to any Performance Schedule if its performance of the Services has been suspended due to Force Majeure. Such request shall be made within seven (7) days after the end of the suspension and shall include the proposed revised Performance Schedule which the Employer may accept or reject acting reasonably. Despite any such request, the Consultant shall continue to perform the Services in accordance with the current Performance **Schedule pending the Employer's decision on whether to accept or reject such** request.
- 21.4.3 **To the extent that the Consultant is not performing the Services, the Employer's** payment obligations under this Contract will be suspended.
- 21.4.4 During the suspension of any obligation under Clause 21.4.1, the Employer may make alternative arrangements for the performance of any suspended non-financial obligation, whether by another person or otherwise, without incurring any liability to the Consultant.

#### 21.5 Notification

A Party which is, or expects to be, unable to perform any obligation under this Contract by reason of Force Majeure shall:

- 21.5.1 notify the other Party of the occurrence of the Force Majeure as soon as possible but not more than two (2) days after its occurrence;
- 21.5.2 notify the other Party as soon as possible but not more than seven (7) days after the occurrence of the Force Majeure giving:
  - (A) reasonably full particulars of the Force Majeure and details of the obligations that it is unable to perform by reason of the Force Majeure;
  - (B) the date of commencement of the Force Majeure and an estimate of the period of time required to enable it to resume full or partial performance of its obligations under this Contract; and
  - (C) where possible, the means proposed to be adopted to avoid or remove the circumstances constituting the Force Majeure and to mitigate the effect of the Force Majeure;
- 21.5.3 resume full performance as quickly as commercially possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of performance;
- 21.5.4 notify the other Party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur; and
- 21.5.5 notify the other Party when resumption of performance has occurred.

#### 21.6 Mitigation

- 21.6.1 A Party affected by Force Majeure shall use its commercially reasonable endeavours to avoid or remove the circumstances constituting the Force Majeure and to mitigate its effect. The other Party shall co-operate and provide such assistance as the Party affected by the Force Majeure may reasonably request.
- 21.6.2 If a Party gives a notice where it reasonably expects to be unable to perform any obligation under this Contract by reason of Force Majeure, that **Party's obligation**

to mitigate shall commence upon the giving of the notice but that Party's relief from performance shall only apply once the impact of the Force Majeure has occurred.

#### 21.7 Liability not Relieved

Force Majeure shall not relieve a Party of its obligation to perform this Contract to the extent that its failure to perform is contributed to by:

- 21.7.1 its negligence; or
- 21.7.2 its failure to promptly use its best endeavours to mitigate or remedy the Force Majeure and its effects.

#### 21.8 Force Majeure affecting Sub-Contractor

If any Sub-Contractor is entitled to relief from Force Majeure on terms additional to or broader than those specified in this Clause 21, such additional or broader Force Majeure shall not **excuse the Consultant's non-performance** or entitle the Consultant to relief under this Contract.

#### 21.9 Prolonged Force Majeure

If a Party has given the other Party a notice in accordance with Clause 21.5 and the same Force Majeure prevents or inhibits its performance of its obligations under this Contract for a period of more than the Prolonged FM Period, then either Party may give the other Party a notice requiring the Parties to consult in good faith to decide what action should be taken to carry out the intentions of this Contract. If the Parties are unable to agree on what action should be taken within ten (10) Business Days after the date of such notice, then the Employer may immediately terminate this Contract by notice to the Consultant.

#### 21.10 Special Covid-19 Provisions

21.10.1 In this Clause 21.10:

- (A) **"COVID-19 Pandemic"** means the outbreak of the coronavirus disease 2019 (**"COVID-19"**), as recognised as a pandemic by the World Health Organization on 11 March 2020; and
- (B) **"KSA Authority"** means the government of the Kingdom of Saudi Arabia or of any political subdivision thereof, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies).

21.10.2 Notwithstanding anything to the contrary in the Contract:

- (A) The Parties agree that all the laws, official decisions and directives of the **KSA Authority (the "Laws") related to the COVID-19 Pandemic** published or in **force, as the case may be, as of the Effective Date (the "Reference Date")** (the **"Existing COVID-19 Laws"**) were fully considered by them, are fully reflected in the Contract Price and their respective obligations under the Contract shall be performed notwithstanding the adverse effect of the Existing COVID-19 Laws and without any recourse to Clause 21 (Force Majeure) or any other remedy available to it under the Laws.
- (B) If any additional Laws, or any other laws applicable to this Contract, related to the COVID-19 Pandemic become effective after the Reference Date (the **"New COVID-19 Laws"**), **any adverse impact of the New COVID-19 Laws** on a Party shall constitute Force Majeure under Clause 21 (provided all the other requirements for Force Majeure under this Contract and Sub-Clause (C) below are satisfied). The Parties agree that relief under Clause 21 shall constitute the sole and exclusive remedy related to the New COVID-19 Laws. Any adverse impact from the New COVID-19 Laws shall not entitle

a Party to relief under any provisions hereunder, or any other remedy available to it under the Laws.

- (C) Before a Party may give notice of Force Majeure under Clause 21.5 related to the New COVID-19 Laws (a **"COVID-19 FM Notice"**), the Parties acting reasonably and in good faith shall have determined that technological substitution or other alternative measures to minimize the adverse impact of the New COVID-19 Laws on the performance by a Party are not commercially reasonable.
- (D) Following receipt of a COVID-19 FM Notice by the Employer, the Employer may within twenty eight (28) days and upon reasonable written notice to the Consultant and in its sole discretion:
  - (1) descope at no cost to it all or part of the obligations the performance of which is or will be prevented by the New COVID-19 Laws. If the Employer proceeds to perform (or cause to be performed) any such descoped obligations, the Employer shall do so at its own cost and the Consultant shall co-operate in good faith with, and provide reasonable assistance and information to, the Employer and persons nominated by it to perform such descoped obligations; and
  - (2) either:
    - (a) suspend at no cost to it all or part of the Contract; or
    - (b) terminate all or part of the Contract at no cost to it upon **five (5) days' written** notice.
- (E) The Consultant undertakes:
  - (1) to use all reasonable endeavours to prevent the spread of COVID-19 among its personnel, the **Employer's** site and any person at the **Employer's site, and to pre-empt, avoid, and mitigate its impacts** during performance of the Services for the Employer, including in particular where such Services are provided at a site of the Employer;
  - (2) that any person coming on the site or otherwise performing the Services (other than employees or representatives of the Employer) shall have medical insurance in place;
  - (3) to, where Services are conducted at a site of the Employer, comply and cause all persons performing such services to comply at all times with the laws of the Kingdom of Saudi Arabia related to COVID-19 and good industry practice, including operational protocols, related to COVID-19;
  - (4) to comply in good faith with all COVID-19-related reporting requirements, data gathering and information sharing requirements reasonably requested by the Employer;
  - (5) to use such videoconferencing and similar remote working technology (such as Microsoft Teams) as the Employer may specify; and
  - (6) to cause its subcontractors at all levels to agree on a back-to-back basis with a clause in form and substance similar to that of this Clause 21.10.

## 22. CHANGE IN LAW

- 22.1 If a Change in Law does or will **materially adversely affect the Consultant's performance of** its obligations under this Contract, the Consultant may give a notice to the Employer with respect to such Change in Law; provided that, if such Change in Law results in a violation of

**Law due to the performance of the Consultant's obligations hereunder, the Consultant shall** immediately suspend its performance and shall mutually confer with the Employer on a Variation or, if a Variation cannot be mutually agreed or legally allowed, a termination of this Contract. Such notice shall comply with the requirements of Clause 4.2 and the subsequent provisions of Clause 4 shall apply to such Change in Law and the Change in Law shall be deemed to be a proposed Variation for the purposes of Clause 4. Where there is a decrease in costs, the Contract Price will be reduced accordingly.

- 22.2 Clause 22.1 shall only apply to the extent that any additional costs or delay that the Consultant incurs (or will incur) as a result of a Change in Law are directly and solely related **to the Consultant's performance of the Services.**
- 22.3 A Party affected by a Change in Law shall use its commercially reasonable endeavours to avoid or remove the circumstances constituting the Change in Law and to mitigate its effect. The other Party shall co-operate and provide such assistance as the Party affected by the Change in Law may reasonably request.

### **23. DISPUTE RESOLUTION**

- 23.1 All disputes or disagreements arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of this Contract or any other related dispute or disagreement shall be settled by means of the courts of the Kingdom of Saudi Arabia.
- 23.2 The Consultant shall not raise any claim, proceeding or action in connection with the formation, performance, interpretation, nullification, termination or invalidation of this Contract against any:
- 23.2.1 part of the Government of the Kingdom of Saudi Arabia other than the Employer;
  - 23.2.2 Affiliate of the Employer; or
  - 23.2.3 officer, director or employee of the Employer.
- 23.3 The Consultant shall not raise any claim, proceeding or action against the Employer for any:
- 23.3.1 loss, damage or cost; or
  - 23.3.2 additional payment or extension of time under this Contract or at law,
- to the extent that such claim, proceeding or action is based on any act or omission by any third party.
- 23.4 The obligations in this Clause 23 shall survive the expiry or termination of this Contract for any reason.

### **24. NOTICES**

- 24.1 All communications (including certificates, notices, consents, approvals, requests and demands) under or in connection with this Contract:
- 24.1.1 shall be in writing and addressed as set out in the Contract Data or as otherwise notified by a Party to the other from time to time;
  - 24.1.2 shall be signed by or on behalf of the Party making the communication;
  - 24.1.3 shall be delivered by courier or email; and
  - 24.1.4 subject to Clause 24.2, shall be taken to have been received by the addressee:
    - (A) in the case of delivery by courier, on the date shown on the receipt issued by the courier; or
    - (B) in the case of email, on the date and at the time the email is sent, unless that time is outside normal business hours in Saudi Arabia, in which case that communication is taken to be received on the next Business Day in Saudi Arabia.

- 24.2 All invoices issued in connection with this Contract, all notices issued in connection with Clause 23 and any other form of claim issued by one Party against the other in connection with this Contract, shall be delivered by courier and not by email.

## **25. MISCELLANEOUS**

### **25.1 Governing law**

This Contract is governed by the laws of the Kingdom of Saudi Arabia.

### **25.2 Ethics**

25.2.1 Each Party shall use its commercially reasonable endeavours to avoid any act or omission which may conflict in any way with the interests, standing or reputation of the other Party or its Affiliates. For the purpose of this Clause 25.2.1, an act shall include the giving or receiving of any gift (including entertainment), payment, loan, goods, service or favour of any kind.

25.2.2 Each Party shall promptly inform the other Party of any breach or potential breach of Clause 25.2.1 and any violation or potential violation by of any applicable professional code of conduct or ethical requirement of any kind by the such Party.

### **25.3 Entire agreement**

This Contract contains the entire agreement between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them, whether oral or in writing. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement, solicitation or understanding of any kind or nature not set out in this Contract.

### **25.4 Amendments**

This Contract shall only be amended, modified or varied by a document signed by or on behalf of each Party.

### **25.5 Relationship of the Parties**

The relationship of the Parties is that of independent contractors dealing at **arm's** length, and except as otherwise stated in this Contract, nothing in this Contract shall constitute the Parties as partners, joint venturers, co-owners or as the agent, employee or representative of the other or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither Party shall hold itself out as having authority to do the same.

### **25.6 Third Party Rights**

Unless stated otherwise, no third party shall have the benefit of any rights under this Contract.

### **25.7 Severance**

Any provision of this Contract which is prohibited or unenforceable is ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provisions.

### **25.8 Indemnities**

25.8.1 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties, and survives the expiry or termination of this Contract for any reason.

25.8.2 It is not necessary for a Party to incur any cost or to make any payment before enforcing a right of indemnity conferred by this Contract.

25.8.3 A Party shall pay on demand any amount it is required to pay under an indemnity in this Contract.

**25.9 No Representation or Reliance**

Each Party acknowledges:

25.9.1 that no Party (nor any person on a **Party's** behalf) has made any representation or other inducement to it to enter into this Contract; and

25.9.2 that it does not enter into this Contract in reliance on any representation or other inducement by or on behalf of any other Party,

except for representations or inducements expressly set out in this Contract.

**25.10 Waiver**

25.10.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or this Contract by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or this Contract.

25.10.2 No waiver of a breach of a term of this Contract operates as a waiver of another breach of that term (past or future) or of a breach of any other term of this Contract.

25.10.3 A waiver given by a Party under this Contract shall only be effective and binding on that Party if it is given or confirmed in writing by that Party.

**25.11 Cumulative Rights**

Unless expressly stated otherwise or the context does not permit, the rights, powers, privileges and remedies provided in this Contract are cumulative.

**25.12 Survival**

Provisions of this Contract which are expressed to survive its expiry or termination, or from their nature or context, it is contemplated that they are to survive expiry or termination, shall remain in full force and effect despite expiry or termination of this Contract for any reason.

**25.13 Further acts and documents**

The Consultant shall promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to the other Party) required by law or reasonably requested by the Employer in order to give effect to this Contract.

**25.14 Consents**

A consent required under this Contract from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its sole discretion) thinks fit, unless this Contract expressly provides otherwise.

**25.15 Counterparts**

This Contract may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Contract and all together constitutes one agreement.

**25.16 Costs**

Except as otherwise provided in this Contract, each Party shall pay its own costs in connection with negotiating, preparing, executing and performing its obligations under this Contract.

**25.17 Prior Services**

25.17.1 Certain work or services have been performed from the Commencement Date to the date of this Contract, by or on behalf of the Consultant for the Employer in relation to or in connection with work or services described under this Contract (the "**Prior Services**"). The Parties agree that upon the date of this Contract, this Contract will:

- (A) retrospectively apply to all Prior Services;
- (B) supersede and replace any contractual arrangements or otherwise between the Employer and the Consultant in relation to the Prior Services (excluding any undertaking of confidentiality given by the Consultant prior to the date of this Contract in respect of the Project);
- (C) retrospectively apply to any instructions or directions given to the Consultant by the Employer in relation to or in connection with the Prior Services; and
- (D) take into account any sums paid by the Employer to the Consultant in relation to or in connection with the Prior Services.

25.17.2 For the avoidance of doubt, the contract value includes Prior Services carried out by the Consultant from the Commencement Date to the date of this Contract.

***[The remainder of this page is left intentionally blank.]***

## SCHEDULE 1

### SCOPE OF SERVICES

The scope of the overall assignment is for the Consultant to deliver the outlined work package as delineated in this section. The appointed consultant is required to deep dive into the described work package below, for the purpose of delivering the assignment.

The scope of work outlined below is to be considered the minimum required. The Consultant is encouraged to expand on the scope as necessary in order to achieve a comprehensive outcome.

#### 1 THE REQUIREMENT

The Consultant shall **provide the following services ("Services"): Advisory Consultancy Services**

1.1 The Services as described herein shall be provided in accordance with the terms of the Contract.

1.2 Service Location: The consultant will be required to work collaboratively with the NEOM internal **proponent in its offices, NEOM's offices in Riyadh, KSA and other mutually agreed upon locations.**

#### 2 SERVICE DELIVERY

The Consultant must provide the services outlined below in the subsequent subsections:

2.1 The Consultant shall provide the following services:

- Module A: NEOM Communications Department Support

2.2 The Services described herein shall be provided in accordance with the terms of the Contract.

2.3 Module A: NEOM Communications Department Management and Staffing

- Communications: Communications Department Support
  - Overall strategic communications counsel.
  - Day-to-day counsel and support on external and internal communications and media relations activities. To include review of documents prepared by NEOM Communications.
  - Development of NEOM Sector messaging. (Sector communications strategies and implementation to be handled by NEOM Marketing and Communications.)
  - Media training for senior NEOM executives.
  - **Close coordination with NEOM's Marketing Department and other NEOM communications** and marketing agencies to implement communications activities.
  - Issues and crisis communications counsel.

***[The remainder of this page is left intentionally blank.]***



**SCHEDULE 2****SCHEDULE OF COMMERCIALS & KEY PERSONNEL****Contract Price**

<b>Period of Performance</b>	<b>Value (USD)</b>	<b>Value (SAR)</b>
June 2020	245,000.00	918,750.00
July 2020	150,000.00	562,500.00
August 2020	150,000.00	562,500.00
September 2020	150,000.00	562,500.00
October 2020	150,000.00	562,500.00
November 2020	130,000.00	487,500.00
<b>Total</b>	<b>975,000.00</b>	<b>3,656,250.00</b>

The contract value will be subject to a 5% deduction by the Employer upon invoice payment for withholding taxes applicable under the Kingdom of Saudi Arabia's Income Tax Law and Income Tax By-Laws as per Clause **10.5**.

**Key Personnel**

**Whilst not limited, the following are deemed as 'Key Personnel' for the delivery of the services:**

Padraic Riley, Laurence Cook, Tim Falconer, Lauren Lutz, Lyndsey McCusker, Theodora Gabrah and other supporting team members as required.

**Travel & Expenses**

Travel & Expenses in relation to the delivery of the Services will be reimbursable up to a maximum of SAR 2,000,000. The travel & expenses established amount maybe exceeded only per the written pre-approval of the Employer for authorized business travel and expenses, with respect to airfare, vehicle transportation, meals, other NEOM approved activities associated with the delivery of the services and reasonable incidentals (excluding alcoholic beverages and tips), will be reimbursed at actual cost only with receipts and supporting documentation.

***[The remainder of this page is left intentionally blank.]***

**Invoicing Schedule**

Please see the attached invoicing schedule:

<b>Invoice</b>	<b>Relevant Period</b>	<b>Date</b>	<b>Total Value (SAR)</b>
1	June 2020 to November 2020 (inclusive)	An invoice will be raised upon completion of the services	3,656,250.00